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Notice of Allowability

Application No.

10/688,509

Applicant(s)

BYRNE, CHRISTOPHER
RUSSELL

Examiner

Meagan Thomasson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Claim Amendments filed August 20, 2007.
2. ☒ The allowed claim(s) is/are 40, 41, 43, 46, 48-56, 59-61, 63, 64, 70 and 72.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application

6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 10/25/07.

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____


XUAN M. THAI
SUPERVISORY PATENT EXAMINER

TC3700

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

In the CLAIMS:

Cancellation of Claims: Cancel claims 26-33,35-37,39,67 and 73.

Authorization for this examiner's amendment was given in a telephone interview with Edwin Schindler on October 24, 2007.

REASONS FOR ALLOWANCE

Claims 40,41,43,46,48-56,59-61,63,64,70 and 72 are allowed.

The following is an examiner's statement of reasons for allowance:

Claims 40,41,43,46,48-56 and 59-64 were copied from U.S. Patent No. 6,692,354 B2 (Tracy et al.) in response to a request by the examiner to do so, and thus are similar to claims 1-26 of the currently issued U.S. Patent to Tracy et al. However, when interpreted in light of the respective specifications, the claims of Tracy et al. disclose a specific method for calculating the secondary award amount that is substantially different from the method disclosed in the current application. Specifically, the method disclosed by Tracy et al. recites:

Secondary award amount = (primary game award amount) x (multiplier value)

When interpreted in light of the specification, the limitation of multiplier value is described in column 7, lines 4-65 as being an indicia value that is generated and displayed during game play.

In contrast, the current application recites the method of calculating a secondary award amount as:

Secondary award amount = (individual game award amount) x (multiplier);
wherein

Individual game award amount = (a fraction of a total jackpot) x 1

When read in light of the applicant's specification (P. 6-14) the limitation of the individual game award amount must be interpreted as:

Individual game award amount = (total jackpot amount – [house tax + seeding]) / (total number of players entered); and

Multiplier = Number of Winning Shares Purchased; such that

Secondary award amount = ((total jackpot amount – [house tax + seeding]) / (total number of players entered)) x (number of winning shares purchased)

These methods of calculating the secondary prize amount awarded to a player entered into a secondary group game are distinguishable from each other.

Further, the method of determining the secondary prize amount as claimed is distinguishable over the closest prior art, U.S. Patent No. 4,861,041 to Jones et al. Jones discloses a method for playing a secondary group game wherein a player's secondary award is determined by awarding portions of a progressive jackpot to participants according to the value of their poker hand relative to the value of a competitor's poker hand (col. 5 line 44 – col. 6, line 6; wherein Player A is awarded 20% of a jackpot for having a hand comprising a Full House, and Player B is awarded 80% of the jackpot for having a hand comprising Four of a Kind). This is a non-obvious method of award calculation as the prior art known to the examiner provides no indication of providing a secondary award to participants according to the value of a single share of a total jackpot multiplied by the number of jackpot shares that they have purchased prior to the start of the game.

Claims 70 and 72 are allowable over Jones as they contain limitations drawn to a keno game embodiment that is not an obvious variation of the blackjack and/or Five Card Stud implementations disclosed by Jones. Specifically, claims 70 and 72 recite such as "receiving an entry and a primary wager for the primary game from a plurality of entrants, each entry made by one of the plurality of entrants for the primary game comprising a first subset of primary game indicia selected from a set of primary game indicia ... determining a primary game outcome for the primary game, the primary game outcome comprising a second subset of primary game indicia selected from the set of

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primary game indicia ... determining a primary game award amount based on a level of correspondence between the first subset of primary game indicia for the entrant and the second subset of primary game indicia for the primary game". These specifics of determining a winner as outlined in the claims are not an obvious variation the poker-type game taught by Jones as to combine Jones with a reference teaching a Keno game would destroy the manner in which prizes are determined in the poker-type game.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meagan Thomasson whose telephone number is (571) 272-2080. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Meagan Thomasson
October 26, 2007



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SUPERVISORY PATENT EXAMINER
TC3760